

No. 77-1508

Supreme Court, U. S.

FILED

MAY 26 1978

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1977

MARIE D. GUST, PETITIONER

v.

UNITED STATES CUSTOMS SERVICE

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT*

**MEMORANDUM FOR THE RESPONDENT
IN OPPOSITION**

WADE H. MCCREE, JR.,
*Solicitor General,
Department of Justice,
Washington, D.C. 20530.*

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1508

MARIE D. GUST, PETITIONER

v.

UNITED STATES CUSTOMS SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT
IN OPPOSITION

1. Petitioner, a Jehovah's Witness, was discharged from her position as a clerk-stenographer with the United States Customs Service in October 1973 (Pet. App. 14). She claimed that she was discharged solely because of her religion. After a hearing held on June 18, 1974, the Department of the Treasury found no merit to her claim (*ibid.*). The Appeals Review Board of the Civil Service Commission affirmed the determination on January 20, 1975 (*ibid.*).

Petitioner then filed this suit in the United States District Court for the Eastern District of Michigan. Following an evidentiary hearing, the district court held that petitioner was discharged because of her unsatisfactory work record, not because of her religion (Pet. App. 18-20). The court of appeals affirmed (Pet. App. 25).

2. Although petitioner contends (Pet. 7-10, 11-12) that she was dismissed from her federal employment because of her religious beliefs, her contention is unsupported by the record. The district court, after supplementation of the administrative record and a full hearing, specifically found (Pet. App. 20) that "[petitioner's] job performance was substandard, and that this inadequacy of job performance was the sole reason for [petitioner's] discharge." The court of appeals held (Pet. App. 25) that this finding is not clearly erroneous.

This Court has frequently stated that it "cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Berenyi v. Immigration Director*, 385 U.S. 630, 635; *United States v. Reliable Transfer Co.*, 421 U.S. 397, 401 n. 2. There is no such showing here. Petitioner simply argues that her explanation of her dismissal should be preferred to that of her supervisor and a co-worker, both of whom testified that her work was unsatisfactory (Pet. App. 19). The district court was entitled to credit their testimony.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

MAY 1978.